

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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MONDAY, JULY 19, 1999

At 9:30 a.m., the court met in the Library & Courts Building to begin its court calendar session.

PRESENT: SCOTLAND, Presiding Justice  
BLEASE, Associate Justice  
CALLAHAN, Associate Justice

Civil PETER EMMONS et al.  
No. v.  
C027237 CITY OF REDDING

Cause called. Susan S. Hinz argued for Defendant-Appellant.  
Robert A. Rehberg argued for Plaintiffs-Respondent. Cause submitted.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
MONDAY, JULY 19, 1999 CONINUED**

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Civil           LAWRENCE D. MOORE et al.  
No.             v.  
C029570       MATTHEW BENJAMIN

Cause called. Susan S. Hinz argued for Defendant-Appellant.  
Robert A. Rehberg argued for Plaintiffs-Respondent. Cause submitted.

At 9:55 a.m., court recessed. At 9:59 a.m., court reconvened with  
Acting Presiding Justice Blease, Associate Justice Raye, and Associate  
Justice Morrison.

Crim.           THE PEOPLE  
No.             v.  
C028545       MATTHEW BENJAMIN

Cause called. Matthew Benjamin argued for Himself in Pro Per as  
Defendant and Appellant. No appearance was made on behalf of Plaintiff-  
Respondent as argued having been previously waived and approved.  
Caused submitted.

Court recessed at 10:15 a.m., until 9:30 a.m., Tuesday, July 20, 1999.

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Juvenile       In re CHRISTOPHER C. et al.  
No.             HEALTH AND HUMAN SERVICES  
C031873       v.  
                JOSEPH C.  
                BY THE COURT:

No claim of error having been raised by appellant Joseph C., the  
appeal filed February 16, 1999, is dismissed as abandoned. (In re Sade C.  
(1996) 13 Cal 4<sup>th</sup> 952, 994.)

Dated:           July 19, 1999

SCOTLAND, P.J.

**MINUTES OF THE COURT OF APPEAL**  
**STATE OF CALIFORNIA**  
**THIRD APPELLATE DISTRICT**  
TUESDAY, JULY 20, 1999

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At 9:31 a.m., the court met for a continuation of court calendar session.

PRESENT:           BLEASE, Acting Presiding Justice  
                  DAVIS, Associate Justice  
                  MORRISON, Associate Justice

Bailiff: Palmer  
Calendar called.

Civil           SAN RAFAEL ELEMENTARY SCHOOL DISTRICT  
No.            v.  
C030478       CALIFORNIA STATE BOARD OF EDUCATION  
                 LORENE RUSSELL et al.

Cause called. Edmundo Aguilar, Deputy General Counsel argued for Defendant-Appellant. Marguerite Mary Leoni, of Nielsen, Merksamer, Parrinello, Mueller & Naylor argued for Real party in interests-Appellant. Joshua . Bloom, of McCutchen, Doyle, Brown & Enersen argued for Plaintiff-Respondent. Mark K. deLangis, of McCutchen, Doyle, Brown & Enersen appeared for Plaintiff-Respondent. But did not argue. Cause submitted.

Civil           ROYAL INSURANCE CO. OF AMERICA  
No.            v.  
C030206       JAMES M. SOARES TRUCKING, INC.

Cause called. Paul Bjorklund, of Bjorklund, McCreary & Samuel argued for Defendant-Appellant. Larry Caldwell, of Robbins, Robbins & Caldwell argued for Plaintiff-Respondent. Cause submitted.

At 10:15 a.m., court recessed. At 10:17 a.m., court reconvened with the same panel except Associate Justice Kolkey in place of Associate Justice Morrison.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
TUESDAY, JULY 20, 1999 CONTINUED**

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Civil            DANIEL GARRETT  
No.                v.  
C030118        STATE FARM FIRE AND CASUALTY CO.

Cause called Michael Borkowski argued for Plaintiff-Appellant. Douglas K. Wood of Rudloff Wood & Barrows argued for Defendant-Respondent. Cause submitted.

At 10:44 a.m., court recessed. At 10:45 a.m., court reconvened with the Acting Presiding Justice Davis, Associate Justice Raye, and Associate Justice Callahan.

Crim.            THE PEOPLE  
No.                v.  
C025957        LARRY BUFFINGTON

Cause called. David J. Richardson, court appointed counsel argued for Defendant-Appellant. Jane N. Kirkland, Deputy Attorney General argued for Plaintiff-Respondent. (Consolidated with C028364) Cause submitted.

Crim.            THE PEOPLE  
No.                v.  
C028364        TERRY JAY MEYERS

Cause called. Cynthia Thomas, court appointed counsel argued for Defendant-Appellant. Julie A. Hokans, Deputy Attorney General argued for Plaintiff-Respondent. (Consolidated with C025957) Cause submitted.

At 11:05 a.m., court recessed. At 2:01 p.m., court reconvened with Acting Presiding Justice Blease, Associate Justice Davis, and Associate Justice Morrison.

Civil            TOKERUD ASSOCIATES et al.  
No.                v.  
C028304        LEE J. SCHMELTER et al.

Cause called. Kim O., Dincel, of Leshin & Dincel argued for Plaintiff-Appellant. Richard R. Ketchum appeared for Plaintiff-Appellant but did not argue. Michael K. Johnson, of Lewis, D'Amato, Brissois & Bisgaard argued for Defendants-Respondents.(Consolidated with C029552) Cause submitted.

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At 2:05 p.m., court recessed. At 2:07 p.m., court reconvened with the same panel except Associate Justice Raye in place of Associate Justice Morrison.

Court recessed at 2:36 p.m., until 9:30 a.m., Wednesday, July 21, 1999

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MORRISON, J.

We concur:            RAYE, Acting P.J.  
                                 CALLAHAN, J.

## 6

Juvenile In re STEPHANIE R. et al., Persons Coming Under the Juvenile Court  
Law.  
No. v. (Not for Publication)  
C030661 PHYLLIS B.

The orders of the juvenile court are affirmed.  
DAVIS, J.

We concur: SIMS, Acting P.J.  
RAYE, J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
TUESDAY, JULY 20, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)  
No. v.  
C029226 VICTOR LUPE CABRERA  
C029264  
C030850

The judgments of conviction are affirmed. The cases are remanded to the Glenn County Superior Court for resentencing consistent with this opinion.

HULL, J.

We concur: BLEASE, Acting P.J.  
SIMS, J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C027433 BYRON DANIEL PRIMAS

The judgment is affirmed.

Davis, Acting P.J.

We concur: MORRISON, J.  
CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C030067 NATTY DREAD LAMBEY

The judgment is affirmed.

HULL, J.

We concur: BLEASE, Acting P.J.  
SIMS, J.

**WEDNESDAY, JULY 21, 1999**

At 9:26 a.m., the court met in the Library & Courts Building for a continuation of court calendar session

PRESENT: SCOTLAND, Presiding Justice  
BLEASE, Associate Justice  
KOLKEY, Associate Justice

Bailiff: Rios.  
Calendar Called.

**MINUTES OF THE COURT OF APPEAL**  
**STATE OF CALIFORNIA**  
**THIRD APPELLATE DISTRICT**  
WEDNESDAY, JULY 21, 1999

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Crim.       THE PEOPLE  
No.           v.  
C028086     ALFRED ANTHONY GARCIA et al.

Cause called. Clifford Gardner, of Gardner & Derham argued for Defendant-Appellant Michael Childress. Jerome P. Wallingford, court appointed counsel argued for Defendant-Appellant Alfred Garcia. David A. Rhodes, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

At 70:10 court recessed. At 10:14 a.m., court reconvened with Acting Presiding Justice Sims, Associate Morrison, and Associate Justice Callahan.

Civil        PETER PATERNO et al.  
No.           v.  
C013846     STATE OF CALIFORNIA et al.

Cause called. Thomas K. McGuire, Deputy Attorney General argued for Defendants-Appellants-X-Respondents State of California et al. G. Steven Jones, Deputy District Attorney argued for Defendant-Appellant-X-Respondent Reclamation District 784. David Collins, of Gordon & Rees argued Plaintiffs-Respondents-X-Appellants Peter Paterno et al. Garry Livaich, of Desmond, Miller & Desmond argued for Plaintiffs-respondents-X-Appellants Peter Paterno et al. Lloyd Hinkelman, of Kronick, Moskovitz, Tiedemann, & Girard argued for Plaintiff-Respondents-X-Appellants Peter Paterno et al. (Consolidated with C016505 & C019267) Cause submitted.

Civil        PETER PATERNO et al.  
No.           v.  
C016505     STATE OF CALIFORNIE et al.

Cause called. Thomas K. McGuire, Deputy Attorney General argued for Defendants-Appellants-X-Respondents State of California et al. G. Steven Jones, Deputy District Attorney argued for Defendant-Appellant-X-Respondent Reclamation District 784. David Collins, of Gordon & Rees argued Plaintiffs-Respondents-X-Appellants Peter Paterno et al. Garry Livaich, of Desmond, Miller & Desmond argued for Plaintiffs-respondents-X-Appellants Peter Paterno et al. Lloyd Hinkelman, of Kronick, Moskovitz, Tiedemann, & Girard argued for Plaintiff-Respondents-X-Appellants Peter Paterno et al. (Consolidated with C013846 & C019267) Cause submitted.



**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
WEDNESDAY, JULY 21, 1999 CONTINUED**

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At 11:50 a.m., the court took a short recess. At 11:55 a.m., the court convened with the same panel.

Civil           PETER PATERNO et al.  
No.             v.  
C019267       STATE OF CALIFORNIA et al.

Cause called. Thomas K. McGuire, Deputy Attorney General argued for Defendants-Appellants-X-Respondents State of California et al. G. Steven Jones, Deputy District Attorney argued for Defendant-Appellant-X-Respondent Reclamation District 784. David Collins, of Gordon & Rees argued Plaintiffs-Respondents-X-Appellants Peter Paterno et al. Garry Livaich, of Desmond, Miller & Desmond argued for Plaintiffs-respondents-X-Appellants Peter Paterno et al. Lloyd Hinkelman, of Kronick, Moskovitz, Tiedemann, & Girard argued for Plaintiff-Respondents-X-Appellants Peter Paterno et al. (Consolidated with C013846 & C016505) Cause submitted.

At 12:14 p.m., court recessed. At 2:00 p.m., court reconvened with Presiding Justice Scotland, Associate Justice Blease and Associate Justice Callahan.

Civil           LETICIA LOPEZ  
No.             v.  
C027316       ELOISE ANDERSON, as Director, etc.

Cause called. Nu Usaha, Staff Attorney for Legal Services of Northern California argued for Plaintiff-Appellant. Gary F. Smith, Staff Attorney for Legal Services of Northern California appeared for Plaintiff-Appellant but did not argue. G. Mateo Munoz, Deputy Attorney General argued for Defendant-Respondent. Cause submitted.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
WEDNESDAY, JULY 21, 1999 CONTINUED**

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At 2:21 p.m., court recessed. At 2:25 p.m., the court reconvened with the same panel except Associate Justice Davis in place of Associate Justice Blease.

Civil            In re the Marriage of DIANA AND GARRETT BURKHART  
No.             DIAND L. QUILICI  
C027807       v.  
                  GARRETT BURKHART

Cause called. Garrett Burkhardt argued for Himself in Pro Per as Appellant. Diana L. Quilici argued for Herself in Pro Per as Respondent. Cause submitted.

Civil            In re the Marriage of DIANA AND GARRETT BURKHART  
No.             DIAND L. QUILICI  
C029718       v.  
                  GARRETT BURKHART

Cause called. Garrett Burkhardt argued for Himself in Pro Per as Appellant. Diana L. Quilici argued for Herself in Pro Per as Respondent. Cause submitted.

At 2:44 p.m., court recessed. At 2:46 p.m., court reconvened with Acting Presiding Justice Davis, Associate Justice Morrison, and Associate Justice Callahan.

Crim.           THE PEOPLE  
No.             v.  
C029585       RICHARD FRANCIS MOORE

Cause called. David S. Adams, Deputy State Public Defender argued for Defendant-Appellant. Thomas Y. Shigemoto, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

Court adjourned at 3:06 p.m., until 9:30 a.m., Monday, August 16, 1999.

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## 11

Civil            LOUIS J. MOTTO et al.  
No.             v.  
C031393       SOUTHERN PACIFIC COMPANY et al.  
                  SACRAMENTO COUNTY FIRE PROTECTION DISTRICT  
                  BY THE COURT:

Pursuant to the written stipulation of counsel, the appeal filed on December 16, 1998, is dismissed. It is further ordered that the remittitur issue forthwith. (See Cal. Rules of Court, rule 19 (b).)

Dated: July 21, 1999

SCOTLAND, P.J.

Juvenile In re CAITLIN B. et al., Persons Coming Under the Juvenile Court Law.  
No. MICHELE B. (Not for Publication)  
C032563 v.  
SUPERIOR COURT OF SUTTER COUNTY  
DEPARTMEN OF HUMAN SERVICES et al  
The petition is denied.

DAVIS, Acting P.J.

We concur:           NICHOLSON, J.  
                                  KOLKEY, J.

THURSDAY, JULY 22, 1999

Juvenile In re JOSEPH R., a Person Coming Under the Juvenile Court Law.  
No. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
C032005 v. (Not for Publication)  
KIMBERLY R.  
The orders of the juvenile court are affirmed.

MORRISON, J.

I concur: SCOTLAND, P.J.

I concur in the majority opinion.

I write separately to state that, in my view, this appeal is totally and completely frivolous.

SIMS, J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
THURSDAY, JULY 22, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)  
No. v.  
C031418 DEWAYNE SHELDON JESSEE  
The judgment is affirmed.  
SCOTLAND, P.J.  
We concur: SIMS, J.  
MORRISON, J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C031310 JESSE LEVI WALKER  
The judgment is affirmed.  
MORRISON, J.  
We concur: SCOTLAND, J.  
SIMS, J.

Juvenile In re QUENICA M., a Person Coming Under the Juvenile Court Law.  
No. HUMAN SERVICES AGENCY  
C032015 v.  
HENRY N.  
The petition is denied, and the stay ordered on may 19, 1999 is  
discharged.  
SCOTLAND, P.J.  
I concur: HULL, J.  
I concur in the result:  
KOLKEY, J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C030359 KEVIN LEE HARVEY  
The judgment is affirmed.  
SCOTLAND, P.J.  
We concur: CALLAHA, J.  
HULL, J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
THURSDAY, JULY 22, 1999 CONTINUED**

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Crim.           THE PEOPLE                           (Certified for Publication)  
No.             v.  
C027999       REGINO CUSTODIO

          The judgment is modified to give defendant credit for 55 days of actual custody and 26 days for good conduct, a total of 81 days of presentence credit. As modified, the judgment is affirmed. The trial court is directed to amended the abstract of judgment to reflect the modification, and to send a copy of the amended abstract to the Department of Corrections.

SCOTLAND, P.J.

We concur:           SIMS, J.  
                          NICHOLSON, J.

No.             In re PAUL WILLIMA JENSEN ON HABEAS CORPUS  
C033153

BY THE COURT:

          The court having examined the notice of appeal and having determined that the order appealed from is nonappealable, the appeal filed on July 6, 1999 dismissed.

Dated:           July 22, 1999

SIMS. Acting P.J.

FRIDAY, JULY 23, 1999

Civil           RICH FRUIT PAK COMPANY et al.  
No.             v.  
C025624       AMERICAN PROTECTIVE SERVICES et al.  
BY THE COURT:

          Appellants' petition for rehearing is denied.

Dated:           July 23, 1999

SIMS, Acting P.J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
FRIDAY, JULY 23, 1999 CONTINUED**

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Civil           ALFRED JATKO et al.                   (Not for Publication)  
No.            v.  
C029601       RIKKI JOURNEY et al.

The judgment awarding punitive damages against Steven Lindberg and prescriptive easement across parcels 6 and 8 for the benefit of parcel 44 is reversed. In all other respect the judgment is affirmed. The parties shall bear their own costs on appeal.

BLEASE, Acting P.J.

We concur:           CALLAHAN, J.  
                          KOLKEY, J.

Juvenile       In re ANTHONY A., A Person Coming Under the Juvenile Court Law.  
No.            THE PEOPLE                               (Not for Publication)  
C030600       v.  
              ANTHONY A.

The judgment (order committing the minor to CYA) is affirmed.

SCOTLAND, P.J.

We concur:           NICHOLSON, J.  
                          CALLAHAN, J.

Juvenile       In re ROBERT L., a person Coming Under the Juvenile Court Law.  
No.            THE PEOPLE                               (Not for Publication)  
C031900       v.  
              ROBERT L.

The trial court's order of December 22, 1998, requiring the minor to pay restitution in the amount of \$941. 28 is affirmed.

SCOTLAND, P.J.

We concur:           HULL, J.  
                          KOLKEY, J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
FRIDAY, JULY 23, 1999 CONTINUED**

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Crim. THE PEOPLE (Certified for Publication)  
No. v.  
C028605 KRISTEL MARIE HART

The judgment is affirmed.  
(CERTIFIED FOR PUBLICATION)

NICHOLSON, J.

I concur: KOLKEY, J.  
I WOULD REVERSE THE JUDGMENT.  
HULL, J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C028315 ANTHONY RENEE PHILLIPS

The judgment is affirmed. The trial court shall prepare a corrected abstract of judgment reflecting a section 654 stay n count one, the burglary count, rather than on county two, the robbery count. The trial court shall send a copy of the corrected abstract of judgment to the Department of Corrections.

SIMS, J.

We concur: SCOTLAND, P.J.  
NICHOLSON, J.